

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

JOSEPH KUENZLER,

Plaintiff

v.

C-1-08-783

SHERIFF SIMON LEIS, *et al.*,

Defendants

ORDER

This matter is before the Court upon the Report and Recommendation of the United States Magistrate Judge (doc. no. 44), plaintiff's objections (doc. no. 53) and the response filed by defendant Sheriff Simon Leis (doc. no. 54). The Magistrate Judge concluded that 1) defendant Leis has not carried his burden to establish that plaintiff failed to exhaust administrative remedies; and 2) plaintiff's Complaint fails to state a claim for relief that is plausible on its face as to defendant Leis in his official capacity and his individual capacity.

The Magistrate Judge recommended that the Motion for Judgment on the Pleadings (doc. no. 35) filed by defendant Leis be granted and defendant Leis be dismissed as a party to this lawsuit. The Magistrate Judge also recommended that plaintiff's Request for Entry of Default (doc. no. 41) be denied.

Plaintiff objects to the Judge's Report and Recommendation on the grounds that his findings are contrary to law.

Upon a *de novo* review of the record, especially in light of plaintiff's objections, the Court finds that plaintiff's objections have either been adequately addressed and properly disposed of by the Judge or present no particularized arguments that warrant specific responses by this Court. The Court finds that the Magistrate Judge has accurately set forth the controlling principles of law and properly applied them to the particular facts of this case and agrees with the Judge.

Accordingly, the Court hereby ADOPTS AND INCORPORATES BY REFERENCE HEREIN the Report and Recommendation of the United States Magistrate Judge (doc. no. 44). The Motion for Judgment on the Pleadings (doc. no. 35) filed by defendant Leis is GRANTED and defendant Leis is DISMISSED as a party to this lawsuit. Plaintiff's Request for Entry of Default (doc. no. 41) is DENIED.

This case is RECOMMITTED to the United States Magistrate Judge for further proceedings according to law.

IT IS SO ORDERED.

s/Herman J. Weber  
Herman J. Weber, Senior Judge  
United States District Court